

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

SAIA MOTOR FREIGHT LINE LLC¹

Employer

and

Case No. 20-RC-18175

CHAUFFEURS, TEAMSTERS AND
HELPERS, LOCAL UNION NO. 150

Petitioner

DECISION AND DIRECTION OF ELECTION

SAIA Motor Freight Line LLC (Employer), a corporation with an office and place of business in West Sacramento, California, is engaged in the intrastate and interstate transportation of LTL² freight by motor carrier. Chauffeurs, Teamsters and Helpers, Local Union No. 150 (Petitioner) seeks to represent the following unit of employees:

All full-time and regular part-time Line Haul Drivers, City Drivers, Dock Workers (including Hostlers), and Operations Clerks employed by the Employer at the 1745 Cebrian Street, West Sacramento, California terminal; excluding mechanics, lead mechanics, guards, and supervisors as defined in the National Labor Relations Act.

¹ The Employer's name has been amended in accord with the parties' stipulation.

² Less-Than-Truckload (LTL) shipping is the transportation of relatively small freight. The alternatives to LTL carriers are parcel carriers or full truckload carriers.

The petitioned-for unit is comprised of about 67 employees: about 14 Line Haul Drivers; about 18 City Drivers; about 30 Dock Workers, which includes one Lead Dock Worker and four Hostlers; and about five Operations Clerks.

The Employer contends that the petitioned-for unit is inappropriate because it excludes six mechanics³ that share a very close and substantial community of interest with the petitioned-for unit. The Petitioner takes a contrary position, asserting that the petitioned-for unit is appropriate and that the mechanics do not enjoy such a substantial community of interest with the petitioned-for unit employees that mechanics must be included in the unit. After careful review the record and for the reasons discussed below, I find that the petitioned-for unit, which excludes the mechanics, is an appropriate unit for the purposes of collective bargaining.

FACTS

Employer's Facility and Workforce. The Employer's West Sacramento facility is called the West Sacramento terminal, and it is part of the Employer's Sacramento region⁴ within the Employer's Western division.⁵ The Employer has approximately 122 terminals nationwide.

The West Sacramento terminal is about 12,000 to 15,000 square feet, is comprised of an office, dock with platform, garage shop, and parking spaces for trailers and other equipment, and has 44 bay doors. It is considered a medium-sized terminal as opposed to Employer's small and large sized terminals.⁶ The office and dock are

³ The six mechanics include four Mechanics Class B and two Mechanic Class B Leads.

⁴ The Sacramento region includes the following terminals: West Sacramento, Reno, Oakland, San Jose, Stockton, Bakersfield, Fresno, Santa Rosa, Santa Maria, and Las Vegas.

⁵ The Employer is broken up into three divisions: Eastern, Western, and Central.

⁶ The largest terminal, in Dallas, Texas has 185 bay doors.

located in the center of the terminal, and the garage shop, also known simply as the shop, is located about 20 yards from the office.

The office is a square elevated structure which houses all the clerical employees, sales employees, Terminal Manager Joe Myers, and the dispatch office. All the forms, office equipment, and supplies that support the Employer's operation are stored there. The office building also contains the main break room which all employees utilize. The main break room has two vending machines, a television, coffee machine, microwave, chairs, and tables. State-mandated literature and production standards are posted there.

The dock is an elevated concrete platform up to which Drivers back their trailers. The dock's platform is used to facilitate the movement of freight from trailer to trailer, and for sorting, segregating, and distributing goods. Shipments from a trailer are unloaded at the dock and then loaded onto another trailer either going to a local delivery or another destination. Forklifts and other dock tools such as pallet jacks and hand trucks are used to move freight around. One of the 44 bays serves solely as a ramp. A bay is an opening in the side of the facility that has a dock plate and dock bumpers. Trailers back up into the bay so that one can flip a dock plate into the trailer to facilitate the movement of a forklift in and out. At the center of the dock is a podium, an elevated wood platform with a computer. It also has several cubbyholes for manifests, and generally is where the dock supervisor stands throughout the shift.

Mechanics do a large portion of their repair jobs in the garage shop. Some equipment, such as the forklift is housed in the shop while repairs are being done. The shop also contains a separate break room which is much smaller than the main break

room noted above. The shop break room is outfitted with a folding table and a couple of chairs.

The West Sacramento terminal is staffed by Clerks, Dock Workers, Drivers, Mechanics, Leads, and Supervisors/Managers. The Operations Clerks are broken into three levels: Clerical 1,⁷ Clerical 2⁸ and Clerical 3.⁹ Drivers consist of City Drivers and Line Haul Drivers. Dock workers consist of Dock Workers, Lead Dock Workers, and Hostlers. Finally, Mechanics consist of Mechanic Class B and Mechanic Class B Lead. Because the Employer does not currently employ a dispatcher, Operations Manager Chris Holland now performs those duties.

The appointment clerk interacts with Drivers to ensure that freight is delivered to customers at the correct appointment times. The billing clerk interacts with the Drivers to confirm whether customers have paid their delivery bill. The OS&D clerk interacts with Drivers regarding freight that is distressed or mislabeled. The other Clerks support the administration of the Employer's operations in other ways.

The City Drivers, also known as PMB drivers, include the local city drivers, route drivers, and shag or heavy duty drivers. The local city drivers predominantly are responsible for moving freight inside of a small geographical area generally within 100 miles from the terminal, where they pick up and deliver LTL goods. Route drivers typically go into the same geographical areas every day. Shag or heavy duty drivers take out early morning appointment loads and go to a different area every day.

⁷ Clerical 1 includes the data entry clerk, the PM (night) clerk, and the scanning clerk.

⁸ Clerical 2 includes appointment clerks, payroll clerks, and billing clerks.

⁹ Clerical 3 includes the Overages, Shortages and Damages (OS&D) clerk.

City Drivers begin their day by clocking in, getting their assignments and keys from the office, hooking their tractor to their assigned trailer, and then performing a pre-trip safety inspection on their tractor and trailer, based on check points mandated by DOT. The pre-trip inspection requires them to fill out a Vehicle Inspection Report (VIR) and, if there are any defects, to note them on the VIR in order to bring them to the Mechanics' attention. If there is a defect, Mechanics assess it and determine whether something needs to be repaired immediately or if it can be repaired later. After they finish their deliveries and return to the terminal, Drivers do a post-trip inspection. A post-trip inspection involves visually inspecting the tractor for any glaring defects such as tire issues, obvious mechanical issues that may have come up during the course of the night, and any warning lights or noises, or anything of that nature. If the inspection discloses a safety issue, the truck goes to the shop for repairs.

There are two types of Line Haul Drivers: solo drivers who operate on an intrastate basis, and team drivers that operate on an interstate basis. The Line Haul Drivers' basic duty is to transport goods from one terminal to another terminal. Some solo drivers are lay-over drivers and others are meet-and-turn drivers. A layover driver will go from one terminal to another. A meet-and-turn driver who originates in Sacramento might drive to a point that is 50% of the distance between Sacramento and Los Angeles for instance, where he meets a driver from the LA basin and swaps equipment before both return back to their respective origins. A team driver drives continuously to a destination outside the state with another team driver. Line Haul Drivers conduct the same type of pre-trip and post-trip inspections conducted by City Drivers.

The Dock Workers' main responsibility is to move freight from one trailer to another trailer. In moving freight, they utilize equipment such as forklifts, Ala jacks, hand trucks, barrel dollies, and banding machines. The Lead Dock Worker assists supervisors with setting up loads, ensuring trailers are loaded properly, synchronizing deliveries, pulling reports, dispatching drivers, doing yard check, and data entry. Similar to the VIRs that Drivers complete, Dock Workers complete a pre-trip on the forklift each day to check that it is safe to operate. After the forklift inspection report is completed, it is given to Terminal Manager Myers. Myers then takes it to the garage shop and gives it to a Lead Mechanic. The Lead Mechanic reviews and addresses the defect, if necessary. Lastly, Hostlers are Dock Workers whose main job duty is to move trailers from one point of the yard to another by utilizing a special tractor called a yard goat or yard dog that has a hydraulic fifth-wheel on it.

Mechanics perform routine preventive maintenance on trailers, which is triggered based on the number of miles and hours put on a particular unit. They work on doors, tires wheels, air lines and electrical systems. They also repair vehicles, from minor issues to major engine and transmission work.¹⁰ They repair all other equipment such as forklifts, as well as addressing facility maintenance issues such as repairing broken water lines and replacing lights on the platform. One Mechanic spends part of his morning working on the platform to do pre-trip inspections alongside the Dock Workers and if needed, he works on the doors of the trailers to make sure that the doors are functioning correctly. If not functioning properly, he will perform routine maintenance on

¹⁰ Mechanics repair not just units and equipment belonging to the West Sacramento terminal, but any unit or equipment that arrives in West Sacramento. For example, the Mechanics perform preventative maintenance that is required on a vehicle that a Driver drives into Sacramento from Dallas.

them, apply lubrication, or possibly replacing rollers. Lead Mechanics have higher certifications than Mechanics and have the ability to hand out work assignments to Mechanics. Mechanics are not required to have a Class A license (CDL) to be qualified for employment, and none currently does. The Terminal Manager testified, however, that he is in the process of hiring two or three mechanics with a CDL. Mechanics do not handle freight except incidentally when it has to be moved aside in order for the Mechanic to perform a repair.

Management and Supervision. The management hierarchy starts with the Terminal Manager who reports to Regional Manager, who reports to Division Vice-President, who reports to the Vice-President of Operations, who reports to the CEO. The Employer's headquarters and centralized human resources division is located in Atlanta, Georgia. The West Sacramento terminal receives human resources assistance from the regional office in Southern California.

At the lowest level the supervisory hierarchy at the West Sacramento terminal starts with the In-Bound Supervisor (morning shift) and Out-Bound Supervisor (swing shift). They are first-line supervisors and are also referred to as dock supervisors or platform supervisors. They oversee every hourly employee¹¹ in the facility during their shift and are responsible for all production, safety and P&L (profit and loss) goals on their particular shift. They assign work, set schedules, issue minor discipline such as oral warnings and basic write-ups, perform investigations, hold daily and weekly safety meetings, set up the platform, and set up loads. They have never issued any discipline to Mechanics. If there is a repair issue, they will inform a Lead Mechanic if one is on duty, and if not, will go directly to a Mechanic.

¹¹ Hourly employees include the Clerks, Drivers, Dock Workers, and Mechanics.

Above the first-line supervisors is Operations Manager Chris Holland, who is also currently acting as the dispatcher. Holland interacts with the Drivers, Dock Workers, Clerks and Mechanics on a daily basis by assigning work, choreographing the operations, scheduling vacation time and overtime, and issuing discipline short of termination.

Above the manager and supervisors mentioned above is Terminal Manager Joe Myers. He is accountable for the P&L responsibilities; all facts of the operations including local dock operations; rehandling freight for local delivery; breaking bulk shipments and distributing it to other terminals; overseeing the pickup and delivery operations; all maintenance functions of both the facility and equipment; all clerical functions; and, issuing discipline and hiring. Myers reports to Regional Manager Phil Cote who is at the West Sacramento terminal about 75% of the time. There is no evidence in the record that Cote directly supervises or interacts with the employees at the terminal.

Finally, even though Mechanics, like all the other hourly employees, are supervised by first-line supervisors, the Operations Manager and the Terminal Manager, they also have a separate line of supervision. Specifically, Mechanics report to Regional Maintenance Director Joe Coretto.¹² Coretto does not supervise any other employee at the West Sacramento terminal; he only supervises the Mechanics. Coretto works out of the LAX Region in Southern California.¹³ He visits the West Sacramento terminal quarterly. Although not physically at the terminal every day, he does have “daily contact” with the Mechanics (i.e., daily oversight and direction of them). When Lead

¹² Coretto is identified in the transcript incorrectly as “Caretto.”

¹³ There are two Regions in California: Sacramento Region and the LAX Region.

Mechanics have a question concerning information on the computer about scheduled maintenance, they approach either Coretto or Terminal Manager Myers, depending on where the equipment is located. Through his “daily contact, Coretto choreographs the movement of power and trailing equipment through the West Sacramento terminal for both preventive and scheduled maintenance. He does this by communicating periodically with Lead Mechanics, who have the authority to hand out work to Mechanics, to plan out the workload once the power and trailing equipment arrives in West Sacramento. Coretto is also instrumental when large repairs come into West Sacramento such as in-frames, transmission replacements, and things of that nature. In those situations, the garage shop will communicate directly with Coretto on how to facilitate this type of repair. Coretto only interacts with the Terminal Manager occasionally. Hiring of Mechanics requires the agreement of Coretto and Terminal Manager Myers. Myers can discharge a Mechanic for gross misconduct on his own, but if there is a borderline case or a performance issue, he would need Coretto’s agreement. Terminal Manager Myers has processed one Mechanic’s resignation without involving Coretto. In another instance, when a Mechanic was laid off due to a reduction in force, Coretto and the HR department made the decision along with Myers. Coretto also schedules Mechanics’ vacation requests and overtime.¹⁴ Coretto supervises mechanics in other regions besides Sacramento.

Interchange and Frequency of Contact. There is no evidence of any permanent or temporary transfer by an employee in a petitioned-for classification into or out of the Mechanic or Lead Mechanic position. However, about a “handful” of times, a Mechanic

¹⁴ Supervisors and managers at the West Sacramento terminal handle the vacation requests for employees in the petitioned-for unit with the exception of Line Haul drivers who submit their vacation requests to a Line Haul department located in Atlanta, Georgia.

has delivered a shipment in circumstances when all Drivers had already departed for the day. One instance involved a Mechanic delivering a shipment in a garage shop truck because the shipment arrived in West Sacramento after all Drivers had left the terminal. These occurrences were characterized by Myers as “last-minute” occurrences because Mechanics do not routinely deliver goods. No Mechanic possesses a commercial driver’s license while each Driver must have such a license. On two occasions, a Dock Worker has transferred into a Clerk position. Also, a Dock Worker can become a Driver by going through the Employer’s dock-to-driver training program. No such program exists to become a Mechanic.

When Drivers experience mechanical failure while out on the road, they will contact the Terminal to get a haul back to the terminal if possible. Occasionally, the terminal will have the Driver and Mechanic directly communicate with each other and the Mechanic will walk the Driver through each step of the repair. There was no other evidence that other classifications of employees perform the duties that a Mechanic performs.

Employees come into contact with each other in the office. The office is accessed and used by all hourly employees. They come into the office at different times of the day to use the telephone, computer, copy machine, scanner and other office equipment and supplies, and to obtain forms and documents. The main break room that is open to all employees is also located in the same structure as the office. Further, the time clock is located on the outside of the wall that separates the office from the platform, and all hourly employees, except Line Haul Drivers, use the time clock.

All other areas, such as the garage shop, dock and platform, and yard are generally used by the employees that work in those areas. However, throughout the day, employees will enter an area they do not generally work in to perform activities that are incidental to their main job duties. For instance, when a repair is needed on equipment in another area, such as the dock or the yard, a Mechanic will go to that location to repair the equipment. When a Dock Worker or Driver has a piece of equipment that needs repair, or has to check on equipment that is being repaired, or needs a Mechanic to sign off on a VIR, he may go to the shop. Clerks do not utilize the garage shop, but will sometimes deliver a package there.

Finally, all hourly employees attend quarterly meetings held by an officer, regional manager or director. They also attend safety meetings. All hourly employees, except Clerks, attend forklift training meetings.

Training, Skills and Qualifications. Mechanics are highly trained and certificated employees who develop their skills and qualifications over a period of years. There is no supervisor or manager at the West Sacramento terminal to oversee the technical aspects of a Mechanic's job; therefore, they are expected to be fully competent to handle all repair issues with a high degree of independence. They perform major and minor repairs and inspections for vehicles and equipment, and maintain the terminal.

Drivers do not have the special skills, certification, and training that Mechanics have, but they do possess a commercial driver's license which no other classification of employees has, or is required to have. Similarly, the Clerks and Dock Workers do not have the special skills, certification, and training that the Mechanics have.

Hours of Work. The Mechanics' work schedule is staggered so that a Mechanic is on duty 24 hours a day, six days a week. They have eight hour shifts, five days a week, starting at one of the following times: 5 a.m., 6 a.m. 7:30 a.m., 10 a.m., 2 p.m. or 10 p.m. Mechanics are the only employees scheduled to provide 24-hours per day coverage.

City Drivers begin their day anywhere from 4 a.m. to 2 p.m. Line Haul Drivers are either day or night drivers and start at either 9 a.m. or 10:30 p.m.

There is no evidence about the hours of work for Clerks or Dock Workers, other than the Lead Dock Worker who traditionally starts at 4:30 a.m., but who adapts his schedule according to the Employer's needs.

Wages and Other Benefits. Class B Mechanic wages currently start at \$20/hour and top out at \$23/hour. There was no evidence regarding Class B Lead Mechanic wages. Dock Worker wages start at \$14/hour and top out at \$18/hour. Operation Clerk wages begin at \$14/hour and rise to \$18/hour. City Driver wages start at \$18/hour and rise to \$22/hour. Line Haul Drivers are paid by mileage and record their miles on a trip card rather being paid per hour.

All full-time hourly employees receive the same benefits which include medical, dental, vision, 401(k), stock purchase programs, holidays, bereavement, and jury duty.

The Employer provides various types of company uniforms to drivers and mechanics and they are required to wear them. Mechanics generally wear coveralls, whereas Drivers wear the other type of available uniforms. Dock Workers are not provided uniforms and are not required to wear them.

Collective Bargaining History. There is no history of collective bargaining at the West Sacramento terminal.

ANALYSIS

Section 9(b) of the Act provides that the Board “shall decide in each case whether . . . the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or *subdivision* thereof (emphasis added).” “The plain language of the Act clearly indicates that the same employees of an employer may be grouped together for purposes of collective bargaining in more than one appropriate unit.” *Overnite Transportation*, 322 NLRB 723 (1996). In deciding whether a petitioned-for unit is “appropriate” under Section 9(b), the Board’s discretion is broad. *NLRB v. Action Automotive*, 469 NLRB 490, 494 (1985), quoting *NLRB v. Hearst Publications, Inc.*, 322 US 111, 134 (1944). While a petitioner’s desire in regard to unit composition and scope is relevant, it is in no way dispositive, see *Airco, Inc.*, 273 NLRB 348 (1984), because a proposed bargaining unit based on an arbitrary grouping of employees will always be inappropriate. See, e.g., *Moore Business Forms, Inc.*, 204 NLRB 552 (1973); *Glosser Bros., Inc.*, 93 NLRB 1343 (1951). Additionally, the Act prohibits the Board from establishing a bargaining unit based solely on the extent of organization. See, e.g., *Motts Shop Rite of Springfield*, 182 NLRB 172 (1970). Where, however, a petitioned-for unit of employees has a community of interest that is distinct from the interests of the employees sought to be excluded from the bargaining unit, the Board holds such a unit to be an appropriate unit. See *Aerospace Corp.*, 331 NLRB 561, 562 (2000); *Ore-Ida Foods*, 313 NLRB 1016 (1994), *enfd.*, 66 F.3d 328 (7th Cir. 1995).

It is well established that a certifiable unit need only be an appropriate unit, not the most appropriate unit. *Morand Bros. Beverage*, 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951); *Omni International Hotel of Detroit*, 283 NLRB 475 (1987); *P.J. Dick Contracting*, 290 NLRB 150 (1988); and *Dezcon, Inc.*, 295 NLRB 109 (1989). The Board does not compel a petitioner to seek the most appropriate or most comprehensive unit. “The Board’s declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective bargaining.” *Overnite Transportation*, 322 NLRB 723 (1996), citing *Black & Decker Mfg. Co.*, 147 NLRB 825, 828 (1964). The Board’s task, therefore, is to determine whether the petitioned-for unit is an appropriate unit, even though it may not be the only appropriate unit or the ultimate unit. In making unit determinations, the Board first looks to the unit sought by the petitioner. If it is appropriate, the inquiry ends and the Board does not evaluate any competing unit contentions. If, however, the unit is inappropriate, the Board will scrutinize the employer’s proposal. *Dezcon, Inc.*, *supra* at 111. *Also see, Overnite Transportation*, 325 NLRB 612 (1998). In assessing the appropriateness of any proposed unit, the Board considers community of interest factors such as employee skills and functions, degree of functional integration, interchangeability and contact among employees, and whether the employees have common supervision, work sites, and other terms and conditions of employment. See, *P.J. Dick Contracting Inc.*, *supra*.

After a careful review of the record and for the following reasons, I find that there is ample evidence in the record to support Petitioner’s position that the petitioned-for unit which includes Drivers, Dock Workers, and Operations Clerks while excluding Mechanics

is *an* appropriate unit. There is evidence of a high degree of functional integration among the employees in the petitioned-for unit as their functions are all integrated for the movement of freight. The Drivers drive the freight to and from the terminal. The Dock Workers and Hostlers move the freight in and out of the trailers that the Drivers haul. Operations Clerk inputs and tracks data and perform other administrative functions necessary for the accurate and timely delivery of the freight and for billing purposes. Further, they all are commonly supervised by the In-bound and Out-bound Supervisor, Operations Manager and the Terminal Manager. On a day-to-day basis, they do not report to a supervisor or manager located outside the terminal. They are all hired and disciplined by the same supervisors and managers. Lastly, there is evidence of some interchange. On at least two occasions, a Dock Worker transferred into a Clerk position. Also, the Employer has a dock-to-driver training program to enable Dock Workers to become Drivers. There is no similar program for Mechanics. Finally, there is no evidence to support a contention that a separate unit of Mechanics would be an inappropriate unit.¹⁵ Therefore, based on these community of interest factors, the petitioned-for unit is an appropriate unit under Section 9(b) of the Act.

Because the petitioned-for unit is an appropriate unit, the inquiry need go no further. Because the Employer posits that the *only* appropriate unit must contain Mechanics, however, I have conducted the following careful review of the record and case law. I find that they support my decision that Mechanics do not share such a close community of interest with the petitioned-for unit that they *must* be included in the unit.

¹⁵ This is similar to *Overnight Transportation*, 322 NLRB 723 at 729, where the Board concluded that “inclusion of the mechanics here clearly is not required as they could constitute a separate appropriate unit.” Citing *Dodge City of Wauwatosa*, 282 NLRB 459 (1986); *Walker-Roemer Dairies*, 186 NLRB 430 (1970).

First, the Employer's reliance on *Indiana Refrigerator Lines*, 157 NLRB 539 (1966), for the proposition that mechanics are presumptively to be included in the unit in the transportation industry is misplaced because the petitioned-for unit in that case included mechanics and the employer was the party arguing that the only appropriate unit would exclude mechanics. The Board stated "the fact that the drivers and maintenance employees might also separately constitute appropriate units does not preclude a finding that both groups together also constitute an appropriate unit." *Id.* The Board clearly recognized the authority granted by Section 9(b) of the Act to certify *an* appropriate unit and not the most appropriate unit. Significantly, the Board noted that a separate unit of maintenance employees (mechanics) might also constitute an appropriate unit.

Some factors in the instant case do support a finding that Mechanics might appropriately be included with the petitioned-for unit. Mechanics are functionally integrated in the Employer's operation because they repair the tractors, trailers and other equipment used to move and deliver freight;¹⁶ they have some daily work-related contact with employees in the petitioned-for unit;¹⁷ there is a degree of shared supervision;¹⁸ and

¹⁶ The amount and type of functional integration that exists between the Mechanics, Drivers and Dock Workers is similar to the extent of functional integration of mechanics, dock workers and drivers in *Overnite Transportation Co.*, 325 NLRB 612 (1998), wherein the Board excluded the mechanics from the petitioned-for unit. Further, *United Rentals, Inc.*, 342 NLRB 540 (2004), cited by the Employer, is distinguishable because the extent of overlapping functions and interchange was significant in that case where clerical employees repaired equipment normally repaired by mechanics. Also, one manager in that case had oversight and assigned work to all employees without any separate line of supervision, and all the employees had common hours of work. Likewise, *C.M. Carpenter*, 266 NLRB 907 (1983), also cited by the Employer, is distinguishable because in that case, drivers assisted mechanics in pulling engines out of trucks, replacing them with rebuilt engines, putting drive shafts into trucks, hanging rear ends, and taking radiators out of trucks and used the mechanics' tools when performing these tasks. Such a high degree and significant amount of interchange of duties clearly does not exist in the instant case.

¹⁷ Similar to the mechanics in *Novato Disposal Services, Inc.*, 330 NLRB 632 (2000), who were excluded from the petitioned-for unit and who performed repairs on trucks on the road but were generally limited to the mechanics' shop, the Mechanics in the instant case generally spend their day in the garage shop unless performing a repair on-site elsewhere in the terminal, such as the dock. As in *Novato Disposal* at 633, the "[d]river's interaction with mechanics is limited to

they have the same non-wage benefits as the employees in the petitioned-for unit. These facts, however, are insufficient to compel their inclusion in the petitioned-for unit over the objection of Petitioner.¹⁹

Indeed, the record shows that the Mechanics are highly skilled employees who perform major and minor repairs and inspections on all vehicles and equipment, with some higher skilled Mechanics having subspecialties, such as doors, tires, wheels, air lines, and electrical systems on trailers. Prior to becoming qualified for hire, they must go through a certification process. In addition, they must have at least two to three years of diesel mechanic experience. Applicants for a Driver position must have a commercial driver's license which they can earn in about two months with an outside vendor or earn in 12 weeks through the Employer's dock-to-driver program.²⁰

The record also revealed that the Mechanics' pay scale begins and ends at a higher rate than the employees in the petitioned-for unit. The Mechanics' pay scale is from \$20/hour to \$23/hour, whereas the pay scale for City Drivers is from \$18/hour to

submitting reports on their trucks, brining a truck to the shop for service or inspection, or calling a mechanic for road service."

¹⁸ Similar to the mechanics in *Novato Disposal*, the Mechanics in the instant case are assigned work by the Lead Mechanic. Although the Mechanics garage shop is not "autonomous" like the shops in *Novato Disposal*, the Mechanics here have their own separate line of supervision through Coretto. "In any event, the presence of shared supervision is but one factor to be considered, and is not necessarily determinative of unit determinations." *Novato Disposal* at 632, citing *Mc-Mor-Han Trucking Co.*, 166 NLRB 700, 701 (1967).

¹⁹ The Employer's reliance on *Mayflower Contract Services, Inc. v. NLRB*, 982 F.2d 1221 (8th Cir. 1993) has little persuasive value as it was abrogated by *NLRB v. Young Women's Christian Ass'n of Metropolitan St. Louis*, 192 F.3d 111 (8th Cir. 1999). Even if not abrogated, the union in that case petitioned for a unit of dispatchers, drivers, and mechanics and the Court found there was no abuse of discretion for the Board to certify such a unit as an appropriate unit. Therefore, the Court's holding does not support the contention that exclusion of Mechanics from an otherwise appropriate petitioned-for unit is made inappropriate by the exclusion of Mechanics. Similarly, in *NLRB v. Great Western Produce, Inc.*, 839 F.2d 555 (9th Cir. 1988), the Court found no abuse of discretion where the Board held the petitioned-for unit of warehousemen, drivers and mechanics, excluding inside salesmen, was an appropriate unit.

²⁰ It takes about two years to move from Trainee Driver to full-time Driver.

\$22/hour, and for Dock Workers and Clerks, it is \$14/hour to \$18/hour. Line Haul Drivers are not paid by the hour, but by mileage.

Not only do Mechanics have a different wage scale, but their work schedule is also different from the petitioned-for unit. Mechanics are the only classification of employees that are scheduled on a 24-hour basis. Further, even though they also report to, and are supervised by, the Operations Manager and the Terminal Manager, mechanics have their own separate line of supervision. Only mechanics are supervised by the Regional Maintenance Manager Joe Coretto. In contrast, Coretto exercises no authority over the terms and conditions of employment, such as vacation time, work scheduling, discipline and hiring, of petitioned-for employees.

Finally, there is no evidence of any permanent or temporary transfers into or out of the Mechanic classification. There is no evidence any employee in the petitioned-for unit performs any Mechanic duties.²¹ Although Drivers perform pre-trip and post-trip inspections, they do not have the specialized skill of a mechanic and a Mechanic must sign off on the pre-trip inspection forms called VIRs. There is also no evidence that any Mechanic has regularly performed Drivers' duties. Although there is evidence that a "handful" of times a Mechanic delivered goods, those were in circumstances where no Drivers were available and the delivery had to be made that day. At no time did any Mechanic drive a Driver's vehicle which requires a commercial license - no Mechanic possesses one. I note that evidence of a Mechanic performing driving duties in the instant

²¹ A Driver performing a non-routine repair under exigent circumstances with the help of a Mechanic who is communicating each step of the repair to the Driver is distinguishable from the extent of repair performed by non-mechanic employees in *United Rentals, Inc.*, supra or *C.M. Carpenter*, supra. In *United Rentals*, employees performed duties of other classifications every day and the counter employee actually performed repairs that a mechanic would accomplish. In *C.M. Carpenter*, drivers not only assisted mechanics in repairs, but they also serviced vehicles. There is no evidence in the instant case of such regular and substantial overlap of duties.

case is even less substantial than the amount of driving performed by a mechanic in *Overnite Transportation*, 325 NLRB 612 (1998). In that case, the mechanic drove a city vehicle an average of 3 hours per day, 4 days per week, and in the 3 months preceding the hearing, the mechanic performed driving duties 12 times while he was scheduled to perform mechanic duties. The Board described this as “insubstantial” evidence of common duties between the mechanics and drivers. *Id.* In the instant case, Mechanics only drive sporadically and under exigent circumstances.

In these circumstances, I find that the Mechanics and Lead Mechanics do not share such a close community of interest with the petitioned-for unit that they must be included in the unit. My finding is consistent with the Board’s decision in *Novato Disposal Services, Inc.*, supra, *Overnite Transportation Co.*, 325 NLRB 612 (1998); and *Overnite Transportation Co.*, 322 NLRB 437 (1996). As such, I find that the petitioned-for unit is an appropriate unit for collective bargaining purposes. *Mc-Mor-Han Trucking Co., Inc.*, 166 NLRB 700 (1967).

CONCLUSIONS AND FINDINGS

Based upon the entire record, I conclude and find as follows:

1. The hearing officer’s rulings made at the hearing are free from prejudicial error and are affirmed.
2. The parties stipulated, and I find, that the Employer is an employer as defined in Section 2(2) of the Act, is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The parties stipulated, and I find, that the Union is a labor organization within the meaning of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Line Haul Drivers, City Drivers, Dock Workers (including Hostlers), and Operations Clerks employed by the Employer at the 1745 Cebrian Street, West Sacramento, California terminal; excluding mechanics, lead mechanics, guards, and supervisors as defined in the National Labor Relations Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **Chauffeurs, Teamsters and Helpers, Local Union No. 150**, or no union. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the

election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be

used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 20, 901 Market Street, Suite 400, San Francisco, CA 94103, on or before March 28, 2008. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, www.nlr.gov,²² by mail, or by facsimile transmission at (415)356-5156. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Because the list will be made available to all parties to the election, please furnish a total of **two** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to

²² To file the list electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Regional, Subregional and Resident Offices** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, the user must check the box next to the statement indicating that the user has read and accepts the E-Filing terms and then click the "Accept" button. The user then completes a form with information such as the case name and number, attaches the document containing the election eligibility list, and clicks the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, www.nlr.gov.

potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by April 4, 2008. The request may be filed electronically through E-Gov on the Board's web site, www.nlrb.gov,²³ but may not be filed by facsimile.

DATED AT San Francisco, California this 21st day of March 2008.

/s/ Tim Peck

Tim Peck, Acting Regional Director
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, California 94103-1735

²³ Electronically filing a request for review is similar to the process described above for electronically filing the eligibility list, except that on the E-Filing page the user should select the option to file documents with the **Board/Office of the Executive Secretary**.